IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FIRST DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 403 of 1999

Between:

Gudipati Prasad, S/o.Musalayya @ Bapanayya,

35 years, Occ: Agriculture, R/o.Polavaram village &

Mandal, West Godavari District.

..... PETITIONER

AND

1. Mandal Revenue Officer, Polavaram Mandal,

West Godavari District.

2. Revenue Divisional Officer, Kovvur,

West Godavari District.

..RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ of Mandamus or any appropriate Writ, order or direction, declaring the proposed impugned action of the respondents and their subordinates in taking possession of petitioner's land in R.S.No.232/2, 233/2, measuring Ac.5-10 cents and Ac.8.11 cents respectively situate at Vinjaram(V), Polavaram Mandal, West Godavari District, without due process of law is illegal, arbitrary, high-handed and violative of principles of natural justice and Articles 14, 16, 19 (1)(g), 21 and 300-A of Constitution of India and for a consequential order directing the respondents to drop all further proceedings including dispossession of the petitioner from the above said lands.

Counsel for the Petitioner: Mr Ch.Dhananjaya and MR.C.S.Venkatesh, Advocate

Counsel for the Respondent: GP FOR REVENUE

The Court made the following :

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O R D E R :

The petitioner claims to be the owner of land admeasuring Acs.13.21 in Survey Nos.232/2 and 233/2 of Vinjaram Village, Polavaram Mandal, West Godavari District. According to the petitioner, it is an ancestral property. The Mandal Revenue Officer, Polavaram Mandal, first respondent herein, issued a notice styled as invitation on 21-9-1998 calling upon the petitioner to attend the meeting scheduled on 23-9-1998 to settle the dispute among the people belonging to Scheduled Tribes and Non-Scheduled Tribes. The petitioner, having received the same did not attend the meeting and alleging that on 26-12-1998 the respondents threatened to dispossess the petitioner, filed the present writ petition. He prays for the following relief.

For the reasons mentioned in the accompanying affidavit it is, therefore, humbly prayed that the Hon'ble Court may be pleased to issue Writ of Mandamus or any appropriate Writ, order or direction, **declaring the proposed impugned action of the respondents and their subordinates in taking possession of petitioner's land in R.S.No.232/2, 233/2, measuring Ac.5-10 cents and Ac.8.11 cents respectively** situate at Vinjaram(V), Polavaram Mandal, West Godavari District, without due process of law is illegal, arbitrary, high-handed and violative of principles of natural justice and Articles 14, 16, 19 (1)(g), 21 and 300-A of Constitution of India and for a consequential order directing the respondents to drop all further proceedings including dispossession of the petitioner from the above said lands.

This Court admitted the writ petition on 13-1-1999. On the same day, this Court also passed orders in W.P.M.P.No.460 of 1999 staying all further proceedings including dispossession of the petitioner from the land. Though Rule nisi was duly served, respondents have not filed any counter affidavit.

The learned counsel for the petitioner, Sri C.S.Venkatesh, submits that in the

absence of the counter affidavit denying the petition averments, it has to be taken as proved that the petitioner and his ancestors are in possession of the land for the last more than 25 years and, therefore, the respondent cannot dispossess the petitioner without due process of law. I am afraid, this submission cannot be accepted.

When the respondent failed to file a counter affidavit or a reply to the petition averments, it is always open to the Court to call upon the petitioner for proof of the petition averments. In the absence of such proof being produced before this Court, it is not possible to accept the averments made in the affidavit accompanying the writ petition. Indeed, except the invitation dated 21-9-1998 issued by the first respondent, the petitioner has not chosen to place any material before this Court. Be that as it is, the writ petition is filed on mere apprehension to pre-empt any settlement among the Tribals and Non-Tribals as ordered by the District Collector. In this writ petition, therefore, no relief can be granted. Liberty is, however, reserved to the petitioner to approach the respondents for appropriate redressal.

The writ petition, with the above observations, is dimissed. No costs.

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(V.V.S. RAO, J.)

21-07-2004.

Msr.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. Mandal Revenue Officer, Polavaram Mandal,

West Godavari District.

2. Revenue Divisional Officer, Kovvur,

West Godavari District.

3.2CCs to Government Pleader for Revenue, High Court of A.P.,

Hyderabad.

4.2CD copies